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Message Text

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53
ORIGIN CU-04

INFO OCT-01 ARA-10 ISO-00 AID-05 L-03 /023 R

DRAFTED BY CU/ARA:DCSALISBURY:AP
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CU/BFS:MSTEVENS (PHONE)
ARA/LA/EP:WCLARKE (PHONE)
DESIRED DISTRIBUTION
AID/GC:NWILLIANS
---------- 125982
R 300047Z JUL 75
FM SECSTATE WASHDC
TO AMEMBASSY QUITO

UNCLAS STATE 179347

E.O. 11652: N/A

TAGS: OEXC, AFIN, EC

SUBJECT: BINATIONAL COMMISSION SOCIAL SECURITY PAYMENTS

REF: (A) QUITO 4068, (B) 5241

1. DEPARTMENT CONCURS WITH EMBASSY'S APPROACH TO GOE CONCERNING PAYMENT OF FINE TO ECUADOREAN INSTITUTE OF SOCIAL SECURITY AS SET FORTH IN PARAGRAPH 6, REFTEL A AND PARAGRAPH 2 REFTEL B. EMBASSY SHOULD CONTINUE TO GIVE EMPHASIS TO THE UTILIZATION OF ECUADOREAN GOVERNMENT DECREE 424 AS A MUTUALLY SATISFACTORY MEANS OF EXONERATING THE BINATIONAL COMMISSION FROM PAYING THE FINE.

2. IF THIS EFFORT IS NOT PRODUCTIVE AND IF EMBASSY THINKS THE SUGGESTION OUTLINED IN PARAGRAPH 4 BELOW IS IMPRACTICABLE OR INAPPROPRIATE EMBASSY IS AUTHORIZED TO SEND ANOTHER DIPLOMATIC NOTE TO THE FOREIGN MINISTRY, CONVEYING THE
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FOLLOWING:

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- 1. IN NO CIRCUMSTANCES MAY THE USG AUTHORIZE PAYMENT
- FROM APPROPRIATED FUNDS OF A FINE LEVIED AGAINST THE
- USG BY ANOTHER GOVERNMENT.

- 2. WHILE THE COMMISSION IS NOT PART OF THE EMBASSY

ITS FUNDS ARE USG FUNDS, AND ANY FINES LEVIED AGAINST THE COMMISSION ARE THEREFORE LEVIED AGAINST THE USG.

- 3. THESE FUNDS AND OTHER PROPERTY OF THE COMMISSION
- ARE ENTITLED TO SOVEREIGN IMMUNITY.

3. THE ARGUMENTS OF "VOLUNTARY ENROLLMENT" OF COMMISSION EMPLOYEES AND "GOOD FAITH" SHOWN BY PAYMENT OF BACK PAY-MENTS WITH INTEREST ARE REALLY SECONDARY. THE ONLY APPROPRIATE ARGUMENT IS THE ONE CONCERNING SOVEREIGN IMMUNITY.

4. A THIRD POSSIBLE WAY OUT OF THIS DILEMMA CONCERNS YET ANOTHER APPLICATION OF DECREE 424 WHICH THE EMBASSY MAY WISH TO DISCUSS WITH LEONARD LUNDY OF AID'S GENERAL COUNSEL'S OFFICE WHO IS IN QUITO TO LOOK INTO THE MATTER OF ENROLLING AID'S FSLS IN IESS. SHOULD THE EMBASSY DECIDE THAT AID OR ANY OTHER USG AGENCY OUGHT TO ENROLL IN ECUADOREAN SOCIAL SECURITY,IT IS POSSIBLE THAT THE DECISION COULD INCLUDE ALL USG AGENCIES AND THEIR LOCAL EMPLOYEES. IT IS ALSO POSSIBLE THAT EXONERATION FROM ALL

FINES WOULD BE PART OF THE AGREEMENT AND THAT THE BINATIONA COMMISSION COULD BE INCLUDED IN THE OVERALL AGREEMENT DESPITE ITS PECULIAR STATUS. INGERSOLL

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